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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,715

11/17/2003

Glen J. Anderson

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32709

7590

04/30/2008

GATEWAY, INC.

ATTN: PATENT ATTORNEY

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EXAMINER

HUYNH, BA

ART UNIT

PAPER NUMBER

2179

MAIL DATE

DELIVERY MODE

04/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,715	<b>Applicant(s)</b> ANDERSON, GLEN J.	
	<b>Examiner</b> Ba Huynh	<b>Art Unit</b> 2179	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5,6,8,10-13,15,16,18,20-23 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8,10-13,15,16,18,20-23 and 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/6/08 has been entered.

### ***Terminal Disclaimer***

The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34

(a). See 37 CFR 1.321(b) and/or (c).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,690,396. Although the conflicting claims are not identical, they are not patentably distinct from each other because the broaden scope of claims 1-28 are read-on by the patented claims.

NOTE: Applicant's request that the Double patenting to be held in abeyance is noted.

The rejection is therefore still pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent #6,211,857 (Tani et al).

- As for claims 1, 11, 21. Tani et al (hereinafter Tani) teach a computer implemented method and corresponding system for creating a graphical user interface element from a picture created by an artist (1:35-41) or from a drawing created by a computer

(1:42-45, 2:61-66), actions are defined for the captured pictures to create a graphical user interface element (2:1-5, 2:67-3:2, 5:13-28). Tani's teaching of picture created by an artist and then being displayed on a computer screen implies that the hard copy picture is scanned to be displayed on the computer screen. Even if it is not, implementation of creating of a hard copy of a picture and scan the picture to display on a computer screen is well known in the art and would have been obvious in light of Tani's teaching of generating computer picture (1:35-56). Tani fails to specifically teach using the created GUI element in the designing of a web page. However one of skill in the art would be readily recognized that web page design would have been an obvious field of use for the created GUI element since web page design requires the implementation of GUI elements for interaction.

- As for claims 2, 12, 22: The at least one user interface element includes at least one of a label, text box, scroll bar, button, group box, slider control, link and predefined element (2:18-23).
- As for claims 3, 13, 23. The at least one representation of the at least one user interface element is identified by at least one of color, shape, texture, size, border style and optical indicia (5:32-36).
- As for claims 5, 15: Tani teaches the method as described in claim 1, further comprising prompting a user to enter data of a particular type related to the at least one user interface element, wherein the received data is used for creating the GUI element (5:25-28, 6:7-21).
- As for claims 6, 16: The additional information is entered by at least one of

scanning, typing and data download (6:7-21).

- As for claims 8, 18, 26: Tani teaches that picture of the GUI element can be created by and artist or by a computer drawing program appear to implies that the picture can be created on paper or a plastic sheet, or on a magnetic medium. Even if it is not, it would have been obvious to one of skill in the art, in light of Tani, for having the picture created on paper, plastic sheet, or on a magnetic storage medium.
- As for claims 10, 20, 28: Tani fails to teach that the tangible object is selected from group consisting of a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces. However it would have been obvious to one of skill in the art in picture drawing that picture can be drawn on any suitable surface including a sticker, a magnetic object, and a removable plastic object which is subject to electrostatic forces.
- As for claim 27: The at least one representation of the at least one user interface element is associated with an object capable of being positioned on the medium (2:8-16, 7:50-52, 16:59-63).

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ba Huynh whose telephone number is (571) 272-4138. The examiner can normally be reached on Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 571-272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ba Huynh  
Primary Examiner  
AU 2179  
4/27/08

/Ba Huynh/

Primary Examiner, Art Unit 2179